

AMENDED IN SENATE MARCH 24, 2003

SENATE BILL

No. 571

Introduced by Senator Alarcon

February 20, 2003

An act to ~~add Article 6 (commencing with 8780) to Chapter 4 of Part 6 of the Education Code, relating to environmental education; to amend Section 5650.1 of the Fish and Game Code, and to amend Sections 12600, 12606, and 12607 of, to amend and renumber Sections 12608, 12609, 12610, 12611, and 12612 of, and to add Sections 12608 and 12614 to, the Government Code, relating to environmental protection.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 571, as amended, Alarcon. ~~Environmental education fund~~ Civil actions: environment: private individuals.

Existing law authorizes the Attorney General to maintain an action for equitable relief in the name of the people of the State of California against any person, or to intervene in any judicial or administrative proceeding, for the protection of the natural resources of the state from pollution, impairment, or destruction.

This bill, in addition, would permit any person to maintain action for equitable relief, or intervene in any proceeding for the protection or restoration of the public health, environment, or natural resources of the state from environmental threat, pollution, impairment, or destruction against any person who has committed or is committing any act or practice that has violated or is violating any law or regulation for the protection of the public health, environment, or natural resources of the state. The bill would specify procedures, rights, and civil remedies in this regard.

Existing law makes a person who deposits in, or permits to pass into, or place where it can pass into, the waters of this state specified substances subject to specified civil penalties.

This bill would permit a private individual to bring a civil action for violating this provision.

~~Existing law contains various provisions regarding environmental education, including a grant program that funds programs in public schools, community colleges, and regional conservation education centers for the purpose of conservation education.~~

~~This bill would establish the Environmental Education Fund and would authorize the deposit of prescribed contributions or grants into the fund. The bill would require the Superintendent of Public Instruction, to annually allocate 60% of the funds for environmental education in the public schools, and would require the remaining 40% of the funds to be allocated to a nonprofit organization or organizations that serves to educate city attorneys, district attorneys, and their deputies and investigators on the fair and uniform enforcement of environmental laws and the advancement of environmental justice. The bill would require the nonprofit organization or organizations to annually report to the Legislature and would require the superintendent to report to the Legislature within 36 months after funds are first allocated.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Article 6 (commencing with Section 8780) is~~
- 2 *SECTION 1. Section 5650.1 of the Fish and Game Code is*
- 3 *amended to read:*
- 4 5650.1. (a) Every person who violates Section 5650 is
- 5 subject to a civil penalty of not more than twenty-five thousand
- 6 dollars (\$25,000) for each violation.
- 7 (b) The civil penalty imposed for each separate violation
- 8 pursuant to this section is separate, and in addition to, any other
- 9 civil penalty imposed for a separate violation pursuant to this
- 10 section or any other provision of law.
- 11 (c) In determining the amount of any civil penalty imposed
- 12 pursuant to this section, the court shall take into consideration all
- 13 relevant circumstances, including, but not limited to, the nature,



1 circumstance, extent, and gravity of the violation. In making this
2 determination, the court shall consider the degree of toxicity and
3 volume of the discharge, the extent of harm caused by the
4 violation, whether the effects of the violation may be reversed or
5 mitigated, and with respect to the defendant, the ability to pay, the
6 effect of any civil penalty on the ability to continue in business, any
7 voluntary cleanup efforts undertaken, any prior history of
8 violations, the gravity of the behavior, the economic benefit, if any,
9 resulting from the violation, and any other matters the court
10 determines justice may require.

11 (d) Every civil action brought under this section shall be
12 brought by the Attorney General upon complaint by the
13 department, or by the district attorney or city attorney in the name
14 of the people of the State of California, *or by any person pursuant*
15 *to Section 12608 of the Government Code*, and any actions relating
16 to the same violation may be joined or consolidated.

17 (e) In any civil action brought pursuant to this chapter in which
18 a temporary restraining order, preliminary injunction, or
19 permanent injunction is sought, it is not necessary to allege or
20 prove at any stage of the proceeding that irreparable damage will
21 occur if the temporary restraining order, preliminary injunction, or
22 permanent injunction is not issued, or that the remedy at law is
23 inadequate.

24 (f) After the party seeking the injunction has met its burden of
25 proof, the court shall determine whether to issue a temporary
26 restraining order, preliminary injunction, or permanent injunction
27 without requiring the defendant to prove that it will suffer grave
28 or irreparable harm. The court shall make the determination
29 whether to issue a temporary restraining order, preliminary
30 injunction, or permanent injunction by taking into consideration,
31 among other things, the nature, circumstance, extent, and gravity
32 of the violation, the quantity and characteristics of the substance
33 or material involved, the extent of environmental harm caused by
34 the violation, measures taken by the defendant to remedy the
35 violation, the relative likelihood that the material or substance
36 involved may pass into waters of the state, and the harm likely to
37 be caused to the defendant.

38 (g) The court, to the maximum extent possible, shall tailor any
39 temporary restraining order, preliminary injunction, or permanent
40 injunction narrowly to address the violation in a manner that will

1 otherwise allow the defendant to continue business operations in
2 a lawful manner.

3 (h) All civil penalties collected pursuant to this section shall not
4 be considered fines or forfeitures as defined in Section 13003 and
5 shall be apportioned in the following manner:

6 (1) Fifty percent shall be distributed to the county treasurer of
7 the county in which the action is prosecuted. Amounts paid to the
8 county treasurer shall be deposited in the county fish and wildlife
9 propagation fund established pursuant to Section 13100.

10 (2) Fifty percent shall be distributed to the department for
11 deposit in the Fish and Game Preservation Fund. These funds may
12 be expended to cover the costs of legal actions or for any other law
13 enforcement purpose consistent with Section 9 of Article XVI of
14 the California Constitution.

15 SEC. 2. *Section 12600 of the Government Code is amended to*
16 *read:*

17 12600. The Legislature finds and declares as follows:

18 (a) It is the policy of this state to conserve, protect, and enhance
19 its environment. It is the policy of this state to prevent destruction,
20 pollution, or irreparable impairment of the environment, *public*
21 *health*, and the natural resources of this state *and to promote*
22 *environmental justice*.

23 (b) It is in the public interest to provide the people of the State
24 of California through the Attorney General *and themselves* with
25 adequate ~~remedy~~ *remedies* to protect the *environment, public*
26 *health, and* natural resources of the State of California from
27 pollution, impairment, or destruction *and to promote*
28 *environmental justice*.

29 (c) Conservation of natural resources and protection of the
30 *public health and* environment are pursuits *that are beyond the*
31 *resources available to state and local public agencies*; often
32 beyond the scope of inquiry, legislation, or enforcement by local
33 government; several local public entities existing in the same
34 ecological community have acted in differing and, sometimes,
35 conflicting manners; uniform, coordinated, and thorough response
36 to the questions of protection of environment and preservation of
37 natural resources must be assured; and these matters are of
38 statewide concern.

39 (d) *Adequate financing of essential environmental law*
40 *enforcement functions is necessary to achieve maximum*

1 *compliance with state environmental laws and to ensure an*
2 *effective disincentive for engaging in practices that are destructive*
3 *to the environment, the public health, and environmental justice.*

4 *(e) Although innovative environmental law education*
5 *programs and self-policing efforts by industry watchdog groups*
6 *may have some success in educating some employers about their*
7 *obligations under state environmental laws, in other cases the only*
8 *meaningful deterrent to unlawful conduct is the vigorous*
9 *assessment and collection of civil penalties as provided in this*
10 *article.*

11 *(f) Staffing levels for state environmental law enforcement*
12 *agencies have, in general, declined over the last decade and are*
13 *likely to fail to keep up with the growth of the economy in the future.*

14 *(g) It is therefore in the public interest to provide that civil*
15 *penalties for violations of environmental laws may also be*
16 *assessed and collected by persons acting as private attorneys*
17 *general, while also ensuring that the Attorney General's*
18 *enforcement actions have primacy over any private enforcement*
19 *efforts undertaken pursuant to this article.*

20 *SEC. 3. Section 12606 of the Government Code is amended to*
21 *read:*

22 *12606. The Attorney General and any person pursuant to*
23 *Section 12608, shall be permitted to intervene in any judicial or*
24 *administrative proceeding in which facts are alleged concerning*
25 *pollution or adverse environmental effects*~~*which*~~ *that could affect*
26 *the public generally.*

27 *SEC. 4. Section 12607 of the Government Code is amended to*
28 *read:*

29 *12607. The Attorney General and any person pursuant to*
30 *Section 12608 may maintain an action for equitable relief in the*
31 *name of the people of the State of California against any person for*
32 *the protection of the natural resources of the state from pollution,*
33 *impairment, or destruction. Equitable relief may include, but is*
34 *not limited to, a writ, prohibitory or mandatory injunction,*
35 *restitution of the environment and to any person that was harmed,*
36 *and the disgorgement of funds gained from any prohibited act or*
37 *practice.*

38 *SEC. 5. Section 12608 is added to the Government Code, to*
39 *read:*

1 12608. (a) Any person may maintain an action for equitable
2 relief, or intervene in any proceeding, for the protection or
3 restoration of the public health, environment, or natural resources
4 of the state from environmental threat, pollution, impairment, or
5 destruction against any person who has committed or is
6 committing any act or practice that has violated or is violating any
7 law or regulation of this state intended to protect, restore, or
8 enhance the public health, environment, or natural resources of the
9 state.

10 (b) Any person may bring an action or intervene pursuant to
11 subdivision (a), subject to the following conditions:

12 (1) The person shall provide a general notice of the intent to
13 bring an action or intervene to the Attorney General at least 60
14 days prior to commencing the action, unless the threat to the
15 environment, public health, or natural resources is imminent, in
16 which case the person shall give notice that is reasonable under the
17 circumstances. The notice may be given confidentially pursuant to
18 Section 1040 of the Evidence Code. If the Attorney General brings
19 the noticed action or intervenes, the person giving notice may
20 request permission from the court to intervene in the action or
21 proceeding, as well.

22 (2) Neither the Attorney General nor any public prosecutor has
23 already commenced and is diligently prosecuting an action for the
24 same alleged violation or conduct. However, if the Attorney
25 General or prosecutor brings the action or intervenes after the
26 notice described in paragraph (1) has been provided, the person
27 giving notice may request permission from the court to intervene
28 in the action. The availability of, pendency of, or result of any
29 enforcement action by an administrative agency shall not diminish
30 the power of the court or other tribunal to entertain the noticed
31 action or impose any remedy.

32 (3) Notice of the resolution of the action or proceeding shall be
33 given to the Attorney General, with all terms, agreements, and
34 conditions disclosed. Where any future or continuing obligation is
35 imposed, the resolution shall be filed with the court or tribunal in
36 which the proceeding is pending.

37 (4) If resolution of the action or proceeding involves the
38 payment of any funds by any party to any other person or party, the
39 complete terms, agreements, and conditions regarding the
40 payments shall be fully disclosed to the Attorney General and

1 *subject to a public hearing and approval by the court or tribunal*
2 *in which the action or proceeding is pending. Monetary relief shall*
3 *not inure to the direct benefit of the person providing the notice.*
4 *Any funds shall, to the extent practicable, be used to remedy,*
5 *restore, protect or otherwise enhance the public health,*
6 *environment, or natural resources of the state.*

7 *(5) If the person who provides notice of the action or*
8 *intervention prevails in the action or proceeding, in whole or in*
9 *part, the person shall be entitled to reimbursement for reasonable*
10 *costs and attorney fees incurred in bringing the action.*

11 *(6) No action may be maintained under this section against any*
12 *business, if the business has less than 10 full-time equivalent*
13 *employees at the time of the alleged violation.*

14 *SEC. 6. Section 12608 of the Government Code is amended*
15 *and renumbered to read:*

16 ~~12608.—~~

17 *12609. In any action maintained under Section 12607, the*
18 *defendant may also show, by way of an affirmative defense, that*
19 *there is no more feasible and prudent alternative to the defendant's*
20 *conduct, and that ~~such~~ the defendant's conduct is consistent with*
21 *the protection of the public health, safety, and welfare.*

22 *SEC. 7. Section 12609 of the Government Code is amended*
23 *and renumbered to read:*

24 ~~12609.—~~

25 *12610. Any action brought pursuant to Section 12607 to*
26 *review, set aside, void, or annul any decision in any zoning matter*
27 *of an administrative body or of a legislative body, or concerning*
28 *any of the proceedings, acts, or determinations taken, done, or*
29 *made prior to ~~such~~ the decision, or to determine the*
30 *reasonableness, legality, or validity of any such decision shall not*
31 *be maintained unless ~~such~~ the action is commenced within 180*
32 *days after the date of ~~such~~ that decision.*

33 *SEC. 8. Section 12610 of the Government Code is amended*
34 *and renumbered to read:*

35 ~~12610.—~~

36 *12611. In granting temporary and permanent equitable relief,*
37 *the court may impose ~~such~~ conditions upon the defendant ~~as that~~*
38 *are required to protect the natural resources of the state from*
39 *pollution, impairment, or destruction. In granting any temporary*
40 *or permanent equitable relief in any action in which it is alleged*

1 *that a person has committed or is committing any act or practice*
2 *that has or will violate any law or regulation of this state intended*
3 *to protect, restore, or enhance the public health, environment, or*
4 *natural resources of the state and the person bringing the action*
5 *has shown a probability of success in proving the past or a future*
6 *violation, harm to the public health, environment, or natural*
7 *resources of the state shall be presumed. In weighing the equities,*
8 *the court shall not consider as a harm to the party to be enjoined,*
9 *the costs of compliance or lost revenue that compliance with the*
10 *law might impose.*

11 *SEC. 9. Section 12611 of the Government Code is amended*
12 *and renumbered to read:*

13 ~~12611.~~—

14 *12612. (a) Whenever proceedings before an administrative*
15 *agency are pending or available to determine the legality of the*
16 *defendants' conduct, program, or product, the court shall stay the*
17 *action brought pursuant to Section 12607 pending the completion*
18 *of such the proceedings unless such that stay will result in*
19 *irreparable pollution, impairment, or destruction to any natural*
20 *resource.*

21 *(b) In the order staying the proceedings under subdivision (a),*
22 *the court may grant temporary equitable relief where appropriate*
23 *to prevent irreparable pollution, impairment, or destruction of any*
24 *natural resource.*

25 *SEC. 10. Section 12612 of the Government Code is amended*
26 *and renumbered to read:*

27 ~~12612.~~—

28 *12613. (a) In any administrative, licensing, or other such*
29 *proceeding or in any proceeding for judicial review thereof which*
30 *is made available by law, the Attorney General or any person*
31 *pursuant to Section 12608 shall be permitted to intervene upon*
32 *showing that the proceeding or action for judicial review involves*
33 *conduct, programs, or products which that may have the effect of*
34 *impairing, polluting, or destroying the natural resources of the*
35 *state.*

36 *(b) In any proceeding described in subdivision (a), in which the*
37 *Attorney General or any person pursuant to Section 12608 is a*
38 *party, the agency or court shall consider the alleged impairment,*
39 *pollution, or destruction of the environment, public health, or*
40 *natural resources of the state, and no conduct, program, or product*

1 shall be authorized or approved ~~which~~ *that* does, or will have such
2 effect unless it is consistent with the protection of the public health,
3 safety, or welfare.

4 (c) In any judicial review under this section, the evidence
5 before the court shall consist of the record before the agency and
6 any other relevant evidence ~~which~~ *that*, in the judgment of the
7 court, should be considered to effectuate and implement the
8 policies of this article.

9 *SEC. 11. Section 12614 is added to the Government Code, to*
10 *read:*

11 *12614. (a) For the violation of any provision of any code,*
12 *except those for which a civil penalty has already been established,*
13 *there is established a civil penalty for a violation, as follows:*

14 *(1) If no criminal penalty amount has been established for a*
15 *violation of the provision, the civil penalty is two thousand five*
16 *hundred dollars (\$2,500) per violation per day.*

17 *(2) If a criminal penalty has been established for a violation of*
18 *the provision, the civil penalty is the amount of the criminal*
19 *penalty, or twenty-five thousand dollars (\$25,000) per violation*
20 *per day, whichever is greater.*

21 *(b) At least 50 percent of civil penalties recovered under this*
22 *section shall be used toward environmental programs and may be*
23 *directed toward renewable energy projects at state facilities,*
24 *public school environmental education programs and performing*
25 *environmental restoration projects.*

26 ~~added to Chapter 4 of Part 6 of the Education Code, to read:~~

27
28 ~~Article 6. Environmental Education Fund~~

29
30 ~~8780. (a) The Environmental Education Fund is hereby~~
31 ~~established in the State Treasury for the purposes of this article.~~
32 ~~Contributions to the fund made pursuant to the settlement of a legal~~
33 ~~action brought in state or federal court involving an environmental~~
34 ~~violation, a grant from the federal government or a local~~
35 ~~governmental agency, or a contribution from a private~~
36 ~~organization or individual may be deposited into the fund and shall~~
37 ~~be administered by the department for the purposes of this article.~~
38 ~~Contributions made to the fund from the settlement of a legal~~
39 ~~action shall be approved by the court and shall be limited to~~

1 amounts paid by a defendant for the purpose of restitution only if
2 the victims that incurred the loss can not be individually identified.

3 (b) ~~Each fiscal year, the department shall allocate funds from~~
4 ~~the Environmental Education Fund, upon appropriation by the~~
5 ~~Legislature, for environmental education in accordance with the~~
6 ~~following schedule:~~

7 (1) ~~An amount equal to 60 percent of the total amount~~
8 ~~appropriated from the fund for that fiscal year shall be allocated~~
9 ~~by the Superintendent of Public Instruction for purposes of~~
10 ~~environmental education in the public schools.~~

11 (A) ~~The department may use funds allocated under this~~
12 ~~paragraph for environmental education programs described in~~
13 ~~Article 4 (commencing with Section 8750).~~

14 (B) ~~The department shall allocate funds pursuant to this~~
15 ~~paragraph to school districts representing all geographical regions~~
16 ~~of the state, including both rural and urban regions.~~

17 (C) ~~The department may expend up to 10 percent of the funds~~
18 ~~allocated pursuant to this paragraph on administrative and~~
19 ~~overhead costs necessary to implement this paragraph.~~

20 (2) ~~An amount equal to 40 percent of the total amount~~
21 ~~appropriated from the fund each fiscal year shall be allocated by~~
22 ~~the Superintendent of Public Instruction to a nonprofit~~
23 ~~organization or organizations that serves to educate city attorneys,~~
24 ~~district attorneys, and their deputies and investigators on the fair~~
25 ~~and uniform enforcement of environmental laws and the~~
26 ~~advancement of environmental justice. The nonprofit organization~~
27 ~~or organizations shall use the funds exclusively for the purposes~~
28 ~~of environmental education and the advancement of~~
29 ~~environmental justice.~~

30 (A) ~~Funds shall be allocated pursuant to this paragraph only to~~
31 ~~a nonprofit organization that meets both of the following~~
32 ~~requirements:~~

33 (i) ~~Prosecutors comprise a majority of the membership of the~~
34 ~~organization.~~

35 (ii) ~~The organization develops and implements courses of~~
36 ~~instruction to train public prosecutors and provides educational~~
37 ~~publications on the enforcement of state and local environmental~~
38 ~~laws.~~

39 (I) ~~Publications and courses of instruction provided pursuant to~~
40 ~~this clause shall provide an understanding of the civil and criminal~~

1 requirements of environmental law, as well as, instruction on the
2 fair and uniform enforcement of environmental law consistent
3 with advancement of environmental justice.

4 (H) All courses of instruction shall be developed to fulfill
5 minimum continuing legal education (MCLE) requirements.

6 (C) For each fiscal year in which a nonprofit organization
7 receives funds pursuant to this paragraph, the nonprofit
8 organization shall prepare a report that itemizes the expenditure of
9 the funds. The report shall be submitted to the Legislature and the
10 department on or before September 1 of the fiscal year following
11 the fiscal year in which the funds are received. The department or
12 the Joint Legislative Audit Committee may audit the records of a
13 nonprofit organization relating to the expenditure of funds
14 pursuant to this paragraph.

15 (3) Any funds allocated under this section but not expended for
16 the purpose of paragraphs (1) or (2) during the fiscal year in which
17 the funds are allocated shall be carried over to the following fiscal
18 year for the same purpose.

19 (e) Within 36 months after funds are first allocated from the
20 Environmental Education Fund pursuant to subdivision (b), the
21 Superintendent of Public Instruction shall submit a report to the
22 Legislature itemizing the expenditure of funds pursuant to this
23 article and describing each program or institute funded and the
24 accomplishments of each program or institute.